Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight	)	WC Docket No. 05-195
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

<u>COMMENTS OF TRACFONE WIRELESS, INC.</u>

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SUMMARY

The Commission seeks comment on ways to improve the management, administration, and oversight of the Universal Service Fund ("USF") and ways to prevent waste, fraud, and abuse in the USF programs. The Commission is also considering whether to modify or replace the current revenues-based contribution methodology used to fund the USF. TracFone Wireless, Inc. ("TracFone") contends that replacing the revenues-based system with a connections-based or numbers-based (based on the assignment of working telephone numbers) system would disserve the public interest and would not facilitate the effective and efficient management of the USF. TracFone proposes two modifications to the revenues-based system to promote the efficient and effective management of the USF: 1) the elimination of the wireless safe harbor (which allows wireless providers to report 28.5% of actual revenues as interstate revenues) in favor of wireless providers reporting actual interstate revenues and 2) broadening the base of USF contributors to include those who use telecommunications to provide services, at least services which are perceived to be substitutes for telecommunications services.

A numbers-based or connections-based methodology would create significant managerial and administrative difficulties and inefficiencies and present opportunities for waste, fraud, and abuse. For example, there is no consensus regarding how to count connections or numbers or regarding which carrier would be responsible for the USF contribution associated with a connection or number. Moreover, both non-revenues-based methodologies under consideration would create incentives to artificially reduce the numbers of connections or numbers utilized to minimize USF contributions. In contrast, under a revenues-based system, for-profit providers would not intentionally reduce revenues for the sake of decreasing USF assessments. Furthermore, prior to altering the USF contribution methodology, whether by modifying the current revenues-based system or by adopting a new connection-based or numbers-based system,

the Commission should collect revenue data from all service providers that provide interstate telecommunications services or other services that utilize telecommunications to ensure that it makes a responsible and informed decision about the most equitable manner to support the USF and the most efficient way to manage the USF.

In an Order granting TracFone's petition for forbearance from the facilities requirement for designation as an eligible telecommunications carrier, the Commission expressed concern about the potential for more than one Lifeline-supported service being provided to an eligible household and requested that the issue be addressed in this proceeding. TracFone believes that Lifeline enrollment, certification, and verification procedures will ensure that TracFone customers do not engage in abuse of the USF low income program. Those procedures include an applicant's self-certification, under penalty of perjury, that the applicant is eligible for Lifeline services, that the applicant is the head of the household, and that the applicant receives Lifeline-supported service only from TracFone. TracFone will also use its customer data base to ensure that the applicant's address is not associated with a customer that is already enrolled in TracFone's Lifeline program. TracFone suggests that the Commission require all ETCs to implement TracFone's proposed procedures to ensure that the Lifeline program does not experience fraud, waste, or abuse.

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COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released on June 14, 2005, in the above-captioned proceedings ("USF Management NPRM"). The Commission generally seeks comment on ways to improve the management, administration, and oversight of the Universal Service Fund ("USF") and ways to deter waste, fraud, and abuse in the USF programs. TracFone's comments address the relationship between USF contribution methodology and the effective management and administration of the USF. In addition, TracFone will address the Commission's concern that consumers eligible for Lifeline-supported service may seek to obtain more than one such service and how such fraudulent conduct can be monitored and prevented.

The Commission's USF Management NPRM raises numerous issues regarding the management and administration of the USF and the Commission's oversight of the USF and the Universal Service Administrative Company ("USAC"). The goals of the Commission as stated in the USF Management NPRM include finding ways to improve the USF program and determining whether any rule changes are necessary to more efficiently and effectively administer and manage the USF program while deterring waste, fraud, and abuse.[1] Among the issues raised is whether the Commission should adopt rules "clarifying or improving the contributions process to ensure that the Administrator collects sufficient funds."[2] In addition, the Commission describes how USAC relies on the revenue information provided on FCC Forms 499-A and 499-Q to determine each carrier's USF contribution and "seek[s] comment on whether we should modify or streamline the current contribution process."[3]

The Commission is currently considering in another proceeding whether to adopt alternatives or modifications to the methodology used to assess carriers' contributions to the USF. In particular, the Commission is assessing whether to replace the current revenues-based methodology with a numbers-based methodology that would assess carriers based on their assignment of working North American Numbering Plan telephone numbers, regardless of how many minutes of use or revenues are derived from those numbers. It also is considering proposals to base USF contributions on connections to the public switched telecommunications network. TracFone has advised the Commission that a numbers-based or a connection-based contribution methodology would be inconsistent with the requirement of Section 254(d) of the Communications Act (47 U.C.S. § 254(d)) that "[e]very telecommunications carrier that provides

[1] USF Management NPRM, ¶¶ 2 & 11.

[2] Id. ¶ 65.

[3] Id.

interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[4] Neither a numbers-based nor a connections-based contribution methodology would serve the public interest because either methodology would unfairly disadvantage those telecommunications service providers which disproportionately serve lower income and lower volume consumers and, more importantly, would unfairly increase the USF contribution burden borne by lower income, lower volume consumers.[5] TracFone will not reiterate these arguments in these comments. However, TracFone will discuss how to modify the current revenues-based system so that it is more efficient and effective. It will also address the managerial and administrative difficulties inherent in the various non-revenues-based contribution methodologies under consideration. Furthermore, TracFone will propose that the Commission gather additional data regarding the impact on the size of the USF prior to adopting a new contribution methodology or revising the current revenues-based methodology.

The Commission's USF Management NPRM also raises the issue of protecting the Low Income program against waste, fraud, and abuse.[6] The Commission also raised this issue in its recently-issued Order granting TracFone's petition for forbearance from the facilities requirement for designation as an eligible telecommunications carrier ("ETC").[7] In the Forbearance Order, the Commission conditioned its grant of the petition on TracFone meeting certain requirements, including that TracFone: (1) require its Lifeline customers to self-certify

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[4] See e.g., Comments of TracFone Wireless, Inc., filed February 28, 2003, at 17-26.

[5] See id. at 26-30.

[6] See USF Management NPRM, ¶¶ 56, 93 & 95.

[7] Federal-State Joint Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), FCC 05-165, released September 8, 2005 ("Forbearance Order").

under penalty of perjury upon service activation and annually thereafter that they are the heads of their households and only receive Lifeline-supported service from TracFone, and (2) track each Lifeline customer's primary address and prohibit more than one supported TracFone service at each residential address.[8] The Commission also noted "the potential for more than one Lifeline-supported service per eligible consumer is an industry-wide problem" and "encourage[d] comment on this issue in the *Comprehensive Universal Services Program Management* proceeding to address the potential for abuse throughout the industry."[9] In accordance with that request, TracFone will again describe in these comments how it would ensure that eligible consumers only receive one Lifeline-supported service per household.

I. A Modified Revenues-Based Contribution Methodology Will Promote Efficient Management of the USF.

The primary purpose of the Commission's inquiry is to promote the efficient and effective management and administration of the USF. Although the Commission is considering in another proceeding whether to adopt a new contribution methodology, the Commission has not asserted that the current revenues-based system needs to be replaced due to any problems with management or administration of that system. In fact, when the Commission established the current USF contribution methodology, it "concluded that assessments based on end-user telecommunications revenues would be competitively neutral, [and] *would be easy to administer* ...."[10] Nothing has occurred since that time which has caused the Commission to question that conclusion. The Commission was prompted to initiate a proceeding focused on the USF contribution methodology because of a perceived concern that changes in the marketplace and

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[8] Id., ¶ 18.

[9] Id.

[10] Federal-State Joint Board on Universal Service, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952, ¶ 9 (2002) (emphasis added).

the evolution of technologies have somehow rendered the current system no longer appropriate. In particular, the Commission noted that increased competition, migration to new products and services, and bundling of traditionally distinct services could erode the contribution base.[11] Thus, the Commission's impetus for considering possible changes to the USF contribution methodology is not based on principles of administrative efficiency.

The Commission's concern about a declining USF contribution base does not mean that interstate telecommunications revenue is declining. Instead, users are shifting from wireline to wireless services to make interstate calls and are shifting from traditional voice and facsimile services to Internet-based solutions such as electronic mail and Voice over Internet Protocol ("VOIP" or other "IP-Enabled Services"). The shift in interstate traffic from wireline to wireless together with the wireless safe harbor rule (which allows wireless carriers to declare that only 28.5% of their revenues are interstate irrespective of actual interstate usage) has resulted in a lower USF contribution base. In addition, providers offering IP-Enabled Services are not liable for USF contributions based on their revenues, notwithstanding the incontrovertible fact that in many instances those services are perceived by consumers as substitutes for traditional circuit-switched telecommunications services.

A. TracFone's Proposed Modifications to the Current Revenues-Based Contribution Methodology Will Facilitate a Sustainable USF.

TracFone suggests that a modified revenues-based contribution methodology will facilitate the maintenance of a USF with sufficient funds for the foreseeable future. As explained by TracFone in previously-submitted *ex parte* comments, the wireless safe harbor is no longer

[11] See Federal-State Joint Board on Universal Service, *Further Notice of Proposed Rulemaking and Report and Order*, 17 FCC Rcd 3752, ¶ 1 (2002). TracFone does not agree with those assertions and has noted in numerous previous submissions why it does not believe them to be based on accurate facts or sound analysis.

necessary because wireless carriers have the capability to identify interstate traffic and to allocate interstate revenues. Therefore, wireless providers can report a more precise amount of interstate revenues, rather than estimating their interstate revenues at 28.5% of their total revenues. Requiring wireless providers to report actual interstate revenues will increase the USF contribution base because several major wireless carriers' interstate revenues represent more than 28.5 percent of total revenues. Moreover, the elimination of the safe harbor will promote a more efficient USF contribution system because the safe harbor discourages carriers with high interstate revenues from providing more accurate information and contributing their fair share of USF contributions.

The Commission should also consider subjecting Internet access services and "phone-to-phone" Internet telephony to USF contributions because such services possess many of same characteristics as telephony services delivered wholly over circuit switched networks.[12] Failing to include Internet telephony revenues in the USF contribution base deprives the USF and those who benefit from the fund of substantial and increasing contributions from those rapidly growing services.

Before the Commission abandons the current contribution methodology, which has no substantial managerial or administrative difficulties, it must consider that eliminating the safe harbor and expanding the USF contributors to include Internet access and IP-Enabled Service providers would address many of the concerns regarding the sustainability of the USF. Modifying the current revenues-based system is a better solution than adopting either a numbers-based or connection-based contribution methodology because both of those alternatives would create significant managerial and administrative difficulties and inefficiencies.

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[12] Federal-State Joint Board on Universal Service, *Report to Congress*, 13 FCC Rcd 11,501 (1998).

B. Non-Revenues-Based Contribution Methodologies Present Substantial Administrative and Managerial Inefficiencies.

A numbers-based methodology, like a connection-based methodology would be difficult to administer and manage and would present substantial opportunities for waste, fraud, and abuse. First, there is no consensus about the most effective way to count numbers or connections for purposes of assessing USF contributions.[13] For example, there is inconsistency within the telecommunications industry as to how to categorize and account for certain types of telephone numbers in Number Resource Utilization Forecast ("NRUF") Reports administered by the North American Numbering Plan Administrator.

Second, several areas of ambiguity exist regarding a numbers-based system. There is no consensus on how to count working numbers or how numbers would correlate with interstate telecommunications service. Furthermore, there is no agreement as to whether the carrier to which the telephone numbers are assigned or the carrier which benefits from end user revenue from the number would be responsible for USF contributions associated with a particular telephone number. Under either scenario, there would be inefficiencies. If the number assigning carrier is responsible for USF contributions, that carrier would have difficulty recovering USF contributions from other carriers (*e.g.*, if the numbers are ported) or from service providers such as paging services or VOIP providers. As a result, disputes concerning payment of USF contributions would disrupt the USF program and would divert Commission resources which will inevitably be called upon to resolve such disputes. If the carrier benefiting from end user revenue associated with the number were responsible for USF contributions, several managerial and administrative issues would be present. Those issues include the fact that NRUF Reports are

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[13] See Federal-State Joint Board on Universal Service, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952, ¶¶ 66-99 (2002).

filed semi-annually and are based on historical data while USF revenue reports (FCC Form 499) are field quarterly and are based on projected revenue. Requiring quarterly NRUF Reports from carriers is a possible solution, but such a requirement would be extremely burdensome because it takes carriers more than one month to prepare the NRUF Report.[14] It could also reinstitute the practice of basing USF contributions on previous period data – a practice which the Commission wisely eliminated in 2002.

Additional managerial and administrative issues regarding a numbers-based contribution system include whether Direct Inward Dial ("DID") numbers used by many businesses (which often greatly exceed the number of network connections used by those businesses) should each be counted as a working telephone number; and whether such a system creates incentives to artificially reduce the number of DID numbers without reducing usage of interstate telecommunications services in order to limit USF assessments. Further, as reported by the North American Numbering Council, there are technical difficulties in using a contribution system tied to the number of telephone numbers.[15] Finally, with technology evolving, it is becoming increasingly possible to offer services without use of NANPA telephone numbers. It is inevitable that a USF contribution methodology based on working telephone numbers will create opportunities for innovative providers to "game" the system by finding ways to avoid usage of NANPA numbers in their provision of services.

As for a connections-based methodology, commenters in the contribution methodology proceeding disagree on how to calculate assessments on high capacity connections. In addition, interexchange carriers "have expressed concern that they cannot estimate assessments for multi-

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14 See USF Issues Management Group Report, attached to Letter from Robert C. Atkinson (NANC Chair) to William Maher (Chief, Wireline Competition Bureau, FCC), dated May 14, 2003.

15 See id.

line business connections without access to more reliable data on the number and capacity of non-switched (*e.g.*, special access or private line) connections" from local exchange carriers ("LECs").[16] A requirement that interexchange carriers rely on information from LECs as compared with a carrier being able to simply state its end user revenues (subject to auditing) highlights the potential inefficiencies associated with a connection-based contribution methodology. Second, counting each connection would entail determining how to count high capacity connections such as wireless high-speed Internet connections and multiline business connections. The problems associated with simply defining a "connection" demonstrate that it would be difficult to administer a connection-based contribution methodology, and would inevitably lead to arbitrary "line drawing" which would be subject to second guessing. Finally, a connection-based scheme would not be "demonstrably more flexible and adaptable in the face of changing technology, market supply conditions, and user demand."[17] In contrast, the current revenues-based system, with the modifications suggested above, does provide a viable response to changes in technology and the market while maintaining the efficient and effective management and administration of the USF.

Using a connections or numbers-based system would incentivize service providers and consumers to limit the number of connections or telephone numbers to avoid the additional costs associated USF contributions. "Taxes on connections, capacity, or numbers will lead users and suppliers to economize on those measures of use without regard to the social cost of doing so."[18]

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[16] Federal-State Joint Board on Universal Service, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952, ¶¶ 5 & 86-88 (2002).

[17] Larry F. Darby, *Restructuring Universal Service Fund Charges: A Federal Communications Commission Solution in Search of a Problem*, published in Consumer Perspectives on Universal Service: Do Americans Lose Under a Connection-Based Approach, New Millennium Research Council, June 2003, at 13.

[18] See id.

Thus, a connections or numbers-based system will encourage providers and consumers to choose network configurations and bundles of services that minimize the number of connections or telephone numbers, as well as to choose services, such as VOIP, which meet the same telecommunications needs, but which are not subject to USF contribution obligations. In contrast, providers will not decrease revenues in an effort to minimize USF assessments. Maximizing revenues is one of the primary goals of a for-profit corporation. No rational provider would intentionally jeopardize its ability to earn revenue for the sake of reducing its USF contributions. Based on the foregoing, a connections or numbers-based system would provide opportunities for waste, fraud, and abuse of the USF contribution system as providers and users develop ways to avoid utilizing a connection or telephone number that is counted under the relevant methodology.

C. The Commission Does Not Have Sufficient Data to Determine the Impact of Modifying or Replacing the Current Revenues-Based Contribution Methodology.

The Commission states in the USF Management NPRM that it seeks comment on how to improve the contributions process to "ensure the Administrator collects sufficient funds."[19] Thus, it is imperative that the Commission examine how changes to the USF contribution methodology would impact the amount of funds received by the USF.

The current revenue reporting process does not generate the data necessary for the Commission to evaluate the how the size of the contribution base would be impacted by inclusion in or exclusion from the USF contribution base of certain types of service providers which use interstate telecommunications. FCC Forms 499-A and 499-Q require companies to report non-telecommunications revenues, but there is no breakdown of the source of these

[19] USF Management NPRM, ¶ 65.

revenues. Thus, there is no segregated revenue data associated with enhanced services, information services, Internet telephony, or Internet access services. As a result, the Commission is not able to examine the impact of broadening or narrowing the base of USF contribution sources. Similarly, the presence of the wireless safe harbor relieves wireless service providers from reporting actual interstate revenues. Therefore, the Commission does not know whether and how much the USF contribution base would increase if it were to eliminate the wireless safe harbor. Although TracFone and others believe that wireless interstate revenues represent more than 28.5 percent of total wireless revenues, there is no sound data to support that conclusion and the Commission never has attempted to obtain the data needed to determine what percentage of wireless usage is interstate. Responsible management of the USF requires the Commission to make an informed decision about the relationship between certain contribution methodologies and the size of the USF's contribution base. TracFone proposes that the Commission collect and analyze revenue data from service provides using interstate telecommunications services, including the various categories of service noted above, prior to revising or replacing the current revenues-based contribution methodology.

II. Lifeline Enrollment Procedures Will Prevent Applicants from Engaging in Abuse of the Lifeline Program.

As explained above, the Commission is concerned about the potential for more than one Lifeline-supported service per eligible household. TracFone addressed the Commission's concern in its Compliance Plan filed October 11, 2005, in accordance with the Forbearance Order. TracFone proposed the following procedures, as part of its Lifeline application process and provision of Lifeline service to eligible consumers, to ensure that consumers do not receive more than one Lifeline-supported service per household. TracFone believes that these procedures will prevent TracFone customers from engaging in such abuse of the program, and encourages the Commission to consider making such procedures mandatory for all providers of Lifeline service.

TracFone's Lifeline enrollment form will include a place where the applicant must certify by his/her signature under penalty of perjury that the applicant meets the applicable program-based or income-based criteria for eligibility. In addition, each applicant will be required to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline-supported service only from TracFone. As required by the Forbearance Order, the penalties for perjury will be clearly stated on the certification form.[20]

TracFone's enrollment form will require each applicant to list a primary residential address and a contact telephone number. TracFone's customer information database contains information about each of its customers, including name, contact telephone number, and address. Prior to offering Lifeline service, TracFone will add an information field in its database that identifies whether the customer receives Lifeline-supported service. When a consumer submits a Lifeline service enrollment form, the TracFone employee responsible for processing that application will search TracFone's customer records for the address listed on the form. If the address is already in TracFone's database, the TracFone employee will review the name, telephone number and service plan associated with the address. If an address submitted by a Lifeline applicant is associated with a customer that already receives Lifeline service, TracFone will deny the Lifeline application and advise the applicant of the basis for the denial. TracFone will also require every consumer enrolled in its Lifeline program to verify his/her continued eligibility on an annual basis, or more frequently if required by the applicable state.

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[20] Forbearance Order, ¶ 18.

TracFone shares the Commission's stated concern about abuse of the Lifeline program and that the potential for multiple Lifeline-supported services per consumer is an industry-wide problem.[21] However, TracFone believes that the procedures which it will implement will prevent TracFone customers from engaging in such abuse of the program and to readily detect any customers who attempt to abuse the program, while, at the same time, facilitating the opportunity for qualified low income consumers to participate in the Lifeline program. TracFone proposes that the Commission require all ETCs to use implement procedures similar to those proposed by TracFone to ensure that the Lifeline system is not harmed by fraud, waste, or abuse.

[21] Id.

CONCLUSION

For the reasons stated in these comments, TracFone respectfully requests that the Commission maintain the existing revenues-based USF contribution methodology with modifications to eliminate the wireless safe harbor and to include telecommunications revenues in the USF contribution base, at least in situations where such services are perceived to be substitutes for traditional telecommunications services. TracFone also proposes that the Commission collect and analyze additional revenue data from service providers using interstate telecommunications services prior to making any changes to the current contribution methodology. TracFone further suggests that the Commission require other ETCs to implement certification and verification procedures similar to those that will be implemented by TracFone if it is designated as ETC.

Respectfully submitted,

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October 18, 2005

CERTIFICATE OF SERVICE

I, Michelle D. Guynn, hereby certify that on October 18, 2005, a copy of the foregoing Comments of TracFone Wireless, Inc. was filed electronically with the following:

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